Ronald Chrisman, C-55019
F1-01-116L
P.O. Box 799001
San Diego, CA 92179-9001
In pro per

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY RM DEPUTY

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT

Ronald Chrisman, Petitioner, V David Smith, M.D. et al. Respondents.	Civil Case #: 07CV2150 DMS (BLM) REQUEST FOR APPOINTMENT OF COUNSEL UNDER THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e 5(f)(1):WITH DECLARATION IN SUPPORT OF REQUEST

Petitioner is an indigent, mentally and developmentally disabled person incarcerated at Richard J. Donovan Correctional Facility who has filed a Civil Rights Complaint under 42 U.S.C. §1983 and, he has requested a fellow incarcerated person to assist him in the preparation of this Motion, one who has assisted in the filing of his Civil Rights Complaint. 42 U.S.C. §1983

Petitioner hereby requests that the Court appoint the Office of the Federal Defender for the Southern District of California. or such other counsel as the court may deem appropriate, to represent him in said Civil Rights matter

Therefore, due to Petitioners documented disability [Exibit #1], mental illness issues [Exibit #2], and the complexity of this case, appointment of counsel for the Petitioner would serve the interest of justice.

Petitioner states under penalty of perjury that he is indigent and supplies the Court with documentation. [Exhibit #3]

Title 18 U.S.C. §3006A(2) states, Whenever the United States magistrate of the court determines that the interest of justice so require, representation may be provided for any financially eligible person." Although this applies to a petitioners ability to defend a case, Title 28 U.S.C. Z1915(d) states, "The court may request an attorney to represent any such person unable to employ counsel...."

Petitioner claims his inability to read and write with complete ability, coupled with his mental illness [Exhibit # 1 & 2] violate his constitutional right to equal access to the courts. "Standard in applying prisoner's constitutional right of access to courts is whether legal resources available to prison will enable him to identify legal issues that he desires to present to relevant authorities, including the courts, and to make communications with and presentations to those authorities understood." Adbul-Akbar v. Watson (1993) 4 F3d 195. Petitioner claims his rights are automatically violated because he can not read or write very well, which make communication with the Courts almost impossible.

Petitioner claims he is not afforded legal assistance by way of attorneys or persons capable of filing Civil Rights Complaints for him at the prison. "Inmate has Fourteenth Amendment right of access to adequate law library or to persons trained in the law. U.S.C. Const. Amend. 14" Conner v. Sakai (1993) 994 F2d 1410.

Petitioner claims his access to courts is impeded since he is unable to obtain proper documents from his prison files, and were he afforded access to his prison file, he isn't able to ask for proper documents, as his abilities are so impaired. "First Amendment right of court access cannot be impaired, either directly or indirectly. U.S.C. Const. Amend.

1. " In re Workers Compensation Refund (1995) 46 F3d 816.

Petitioner states his only means of access to the courts is through fellow inmates and library staff that assist with legal research but are not able or qualified to prepare his writ. "Prison's reliance upon fellow prisoners who are not trained in the law to provide legal assistance to prisoners who are functionally illiterate or whose primary language is not English does not suffice as adequate substitute for trained legal assistants. U.S.C. Const. Amends. 5, 14" Casey v. Lewis (1994) 43 F3d 1263. Petitioner again reminds the court that he is functionally illiterate and cannot read or write well enough to prepare his own legal representation.

To facilitate the Court in rendering its judgment:

1. The legitimate nature of Petitioners complaint;

2. The complexity of the case involved.

Petitioners request the Court obtain any necessary documents from his prison file (s) required to substantiate his disabilities and the injuries and deliberate indifference which has occurred as a result of the negligence put fourth in this petition before the court, as summarized in this petition herein.

Petitioner prayerfully requests the court appoint to him an attorney to pursue his Civil Rights Complaint.

I, Ronald Chrisman, declare under penalty of perjury that all the above aforementioned is true and correct.

///

/// Dated Nov. 29, 2007

Ronald Chrisman

Ronald Chrisman
CDC# C-55019

SHORT TITLE: | CASE NUMBER:

______________ (number)

CAUSE OF ACTION—General Negligence

Page 1

ATTACHMENT TO ☐ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff *(name)*:

alleges that defendant *(name)*:

☐ Does ________ to ________

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff
on *(date)*:
at *(place)*:

(description of reasons for liability): This is a complaint for damages for defendents Deliberate Indifference to the serious Medical Needs of the Plaintiff, Mr. Ronald Chrisman C.D.C.R. # C 55019, during his confinement at the R.J. Donovan Correctional Facility in San Diego.

On September 26, 2006, at approximately 8:30 P.M., during the evening Dayroom hour in Building one, while returning to his assigned cell #104L, the Plaintiff, Mr. Ronald Chrisman, C55019, was attacked from behind without warning, without reason or without any provacation. Inmate Bolton, F16958, :Classified a Level four in a Level three E.O.P. Program," assaulted "Mr. Chrisman," (who is a D.D.P., "Developementally Disabled" in the E.O.P. Program at R.J. Donovan) and inflicted serious pain and injuries upon him. The injuries Mr. Chrisman suffered include, but are not limited to: An obviously fractured, severely swollen left fifth finger; A fractured nose, that was bleeding profusely; and a rather large lump behind the left ear; and other minor contusions. This was a shock to Mr. Chrisman, but, the real shock came while at the Facility one Clinic (immediately after the incident) where Mr. Chrisman was refused Medical Treatment, for his serious Medical needs by the Medical Technical Assistant Mr. Sheridan, who was the only Medical personnel on duty at the Facility one Clinic at that moment. Mr. Chrisman pointed out his injuries and complained of the severe pain he was experiencing, this while the escort, Correctional Officer M. X. McCurty, looked on.

MC-025

SHORT TITLE:	CASE NUMBER:

ATTACHMENT *(Number)*: ________ Page 2 of 3

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

"As prescribed by law; Medical Personnel must be trained to respond to emergencies Non-Physician staff like nurse's and physician's assistants cannot lawfully be assigned or try to perform tasks beyond their training or be left without adequate supervision."

California State Law; Government Code Sections 844.6 (a) and 845.6. Specifically states that Public Employees, such as Prison Staff are liable for injuries when an emplyee knows or has reason to know that the Prisoner is in need of immediate Medical Care and fails to take the reasonable action to summon such Medical Care. The state itself may also be liable where the the Public Employee is acting within his or her scope of employment."

Not a thing was done to relieve the Plaintiff, Mr. Chrisman of his pain and suffering. No Medical Treatment/Care was given, nor was there any access provided to any adequate Medical Treatment. See: Sanders V. Yuba, (1967) 247 Cal. App. 2d 748 [55 Cal. Rptr. 852] Failure to obtain Medical Treatment/Care was actionable. See also: Wolfel V. Ferguson, 689 F. Supp. 756, 759 (S.D. Ohio 1987). Prisoners whose Medical needs call for a Physicians attention, must receive it!

Plaintiff believes and alleges that the Defendant, Mr. Sheridan, and the Defendant, Correctional Officer M.X. both acting under color of State Law acted with reckless and callous indifference to Plaintiffs rights as a Prisoner had serious Medical needs, need for treatmentwas obvious. Mr. Chrisman was told to sign up for, "Sick Call," which could take days! I told the M.T.A.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

MC-025

SHORT TITLE:	CASE NUMBER:

ATTACHMENT *(Number)*: ______ Page 3 of 3

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

that my finger was broken and hurt like hell! I also, pointed this out to C.O. McCurty, he said, "Yeah, it looks it, go lock it up! Infliction of unnecessay suffering on Prisoner by failure to treat his Medical needs is inconsistent with contemporary standards of decency and violates the Eighth Amendment to the U.S. Constitution, See Estelle V. Gamble, Employees, such as prison staff are liable for injuries when an employee knows or has reason to know that the prisoner is in need of Immediate Medical Care and fails to take resonable action to summon such Medical Care. The state itself may also be liable where the Public Employee[s is action within he or her scope of emplyment.

Also: "As prescribed by law; Medical Personnel must be trained to respond to emergencies, Non-physician's assistants cannot lawfully be assigned or try to perform tasks beyond their training or be left without adequate supervision."

Mr. Chrisman's Medical dondition as described herein, constitutes a serious medical need and that failure to provide adequate Medical Treatment has resulted in significant injury, permanent deformity and partial loss.(See attached Medical Report Dated: April 23, 2007). Mr. Chrisman still awaits the scheduled surgery for the Deviated Septum which resulted from the Fractured Nose he incurred in the assault.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

I. 8th Amendment violations (Cruel and Unusual Punishment)

A# The court of appeals for the 7th circuit announced that medical conditions that cause pain, but are not life threatening, constitute serious medical needs for 8th Amendment purposes. Gutierrez Vs. Peters, 111 F. 3d 1364 (7th Cir. 1997)

B# 8th Amendment requires that prisoners receive adequate medical care for their serious medical needs.

1. "Deliberate indifference" violates 8th Amendment:

2. A prisoner must show 2-things:

(A) That he had / has a serious medical need.

(B) Prison officials knew about it and ignored the implications. Estelle Vs. Gamble, 429 U.S. 97, 97 S. Ct. 285 (1976).

3. Estelle held that a state government has an obligation to provide medical care to treat life-threatening illness, as well as those where "denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose." The court noted that delays in providing needed medical treatment can also violate the 8th Amendment.

4. Farmer Vs. Brennan, 511 U.S. 825, 114 S. Ct. 1970 (1994): ruling contains numerous and extensive citations on medical neglect cases that will prove useful.

5. McGuckin Vs. Smith, 974 F. 2d 1050 (9th Cir. 1992): Regards a medical condition to be "serious" where failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain.

(A) A prisoner has serious medical need if; "The existence of an injury or condition affects daily activities, or the existence of chronic or substantial pain."

II. A.C.L.U. HANDBOOK, Deliberate indifference

(A) Constitutes cruel and unusual punishment under the 8th Amendment when applied to serious illness or injury. Estelle Vs. Gamble, and City of Rever Vs. Massachusetts General Hospital, 463 U.S. 239, 103 S. Ct. 2979, 77 L. ED 2d 605 (1983).

(B) An inmate will be afforded legal remedy when the following can be demonstrated:

1. Obvious reckless disregard

2. Deliberate indifference - Estelle Vs. Gamble / Benson Vs. Cady, 761 F. 2d 335, 339 (7th Cir. 1985, Cody Vs. Hillard, 599 F. Supp. 1025 (D.S.D. 1984).

(C) Intentional mistreatment - Talley Vs. Stephens, 247 F. Supp. 683 (E.D. Ark 1965).

(D) When prison officials overrule a doctor's medical judgement concerning a prisoners treatment - Martinez Vs. Mancusi, 443 F. 2d 421 (2nd Cir. 1978), aff 'd subnom, Carlson Vs. Green, 446 U.S. 14 / 100 S. Ct. 1468, 64L Ed. 2d. IS (1980).

(E) Cases where the treatment provided is "SO clearly inadequate as to constitute a refusal of care" - Green Vs. Carlson, 581 F. 2d 669 (7th Cir. 1978) aff 'd sub nom, Carlson Vs. Green, Ibid.

for such injury shall be deemed to accrue until it has first been determined that the confinement was illegal.

(Added by Stats.1963, c. 1681, p. 3278, § 1. Amended by Stats.1970, c. 1099, p. 1958, § 6.)

Legislative Committee Comments—Senate

1963 Addition

This section makes clear that liability exists for the intentional and unjustifiable interference with a basic legal right—the right of a person confined involuntarily to seek redress in the courts. To avoid a possible flood of unmeritorious actions, the section requires that a determination shall have been made that the confinement was illegal before an action for damages can be commenced. Such a determination might be a judicial or administrative determination that a prisoner should be released because his confinement was illegal.

Law Revision Commission Comments

1970 Amendment

Section 845.4 is amended to refer to the time of the accrual of the cause of action. This amendment clarifies the relationship of this section to the claims statute. As originally enacted, the statute of limitations might have expired before illegality of the imprisonment was determined—a determination that must be made before the action may be commenced. [9 Cal.L.Rev.Comm. Reports 801 (1969)]

Historical and Statutory Notes

Application of Stats.1963, c. 1681, see Historical and Statutory Notes under Government Code § 810.

The 1970 amendment substituted "no cause of action for such injury shall be deemed to accrue" for "no action for such injury may be commenced".

Law Review Commentaries

Liability of sovereign for wrongful injury of prisoners. 2 Pac.L.J. 697 (1971).

Library References

Prisons ⟹17.
WESTLAW Topic No. 310.
C.J.S. Prisons and Rights of Prisoners §§ 55 to 90.
West's California Practice—Defenses in Civil Actions, Schwing, §§ 38.78, 38.79, 38.81.
West's California Practice—Tort Law, Wilkinson and Barker, § 32.19.

§ 845.6. Medical care for prisoners; failure to obtain

Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care. Nothing in this section exonerates a public employee who is lawfully engaged in the practice of

one of the healing arts under any law of this state from liability for injury proximately caused by malpractice or exonerates the public entity from its obligation to pay any judgment, compromise, or settlement that it is required to pay under subdivision (d) of Section 844.6.

(Added by Stats.1963, c. 1681, p. 3278, § 1. Amended by Stats.1970, c. 1099, p. 1958, § 7.)

Law Revision Commission Comments

1963 Addition

This section limits the duty to provide medical care for prisoners to cases where there is actual or constructive knowledge that the prisoner is in need of immediate medical care. The standards of medical care to be provided to prisoners involve basic governmental policy that should not be subject to review in tort suits for damages. The immunity from liability for damages that is provided by this section exists even where some other statute might be construed to impose a mandatory duty to provide medical care to prisoners under other circumstances. In cases where another statute is so construed, the prisoner is left to the other remedies provided by law to compel public employees to perform their duties. [4 Cal.L.Rev.Comm. Reports 801 (1963)]

1970 Amendment

Section 845.6 is amended to expand the group of public employees who are referred to as potentially liable for medical malpractice to include all types of medical personnel, not merely those who are "licensed" under the Business and Professions Code. This conforms Section 845.6 to amended Section 844.6. The amendment also clarifies the relationship of Section 845.6 and subdivision (d) of Section 844.6. [9 Cal.L.Rev.Comm. Reports 801 (1969)]

Historical and Statutory Notes

Application of Stats.1963, c. 1681, see Historical and Statutory Notes under Government Code § 810.

The 1970 amendment rewrote the last sentence which prior thereto read: "Nothing in this section exonerates a public employee licensed in one of the healing arts under Division 2 (commencing with Section 500) of the Business and Professions Code from liability for injury proximately caused by malpractice or exonerates the public entity from liability for injury proximately caused by such malpractice."

Law Review Commentaries

Liability of sovereign for wrongful injury of prisoners. 2 Pac.L.J. 697 (1971).

Public entity immunity from tort claims by prisoners. 19 Hastings L.J. 573 (1968).

Library References

Prisons ⟹17.
WESTLAW Topic No. 310.
C.J.S. Prisons and Rights of Prisoners §§ 55 to 90.
California Practice Guide: Personal Injury, Flahavan, Rea, Kelly & Tenner, see Guide's Table of Statutes for chapter paragraph number references to paragraphs discussing this section.
West's California Handbook—California Medical Malpractice, McDonald, §§ 2.9, 4.6.
West's California Practice—Defenses in Civil Actions, Schwing, §§ 38.70, 38.78, 38.79.
West's California Practice—Tort Law, Wilkinson and Barker, § 32.18.

Notes of Decisions

Construction and application 1
Deficient care 6
Jury questions 8
Knowledge and intent 4

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

[C.C.P. §§ 446, 2015.5; 28 U.S.C. §1746]

I, RODNEY OGLESBY, am a resident of the State of California and am over the age of eighteen years and am not a party to the above-entitled action. My address is listed below.

On NOV.28,2007, I served the following documents:

SECTION 1983 CIVIL RIGHTS ACTION AND I.F.P.

by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid in the United States Mail by delivering to prison officials for processing through the Institution's internal legal mail system at San Diego California, addressed as follows::

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
880 FRONT STREET, ROOM 4290
SAN DIEGO, CA.92101-8900

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed in the County of San Diego, California on NOV.28,2007

RODNEY OGLESBY F=48866 — Rodney Oglesby F48866
R.J.D.C.F./ F1-1-116
P.O. Box 799001
San Diego, CA 92179-9001

Pursuant to the holding of the United States Supreme Court in Houston v. Lack 108 S. Ct. 2379, 487 U.S. 266, 101 L.Ed.2d 245 (1988) and FRAP, Rule 4 (c) inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the Institution's internal legal mail procedures.